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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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MAY 16 2003

Federal Communications Commission
Office of Secretary

In re Petition of)
)
NATIONAL TRANSLATOR) **RM-10666**
ASSOCIATION)
Westminster, Colorado)
)
For Amendment of Part 74 of the)
Commission's Rules To Add a Rural)
Translator Service)

To: The Commission

COMMENTS OF THE COMMUNITY BROADCASTERS ASSOCIATION

1. Introduction. The Community Broadcasters Association ("CBA") hereby submits these comments with respect to the above-captioned petition for rule making ("Petition") filed by the National Translator Association ("NTA"), seeking to establish a new Rural Translator Service.¹ CBA is the trade association of the nation's Class A and Low Power Television ("LPTV") stations. TV translators and LPTV are both secondary services, and all three classes of station operate with comparable technical facilities and are subject to the application filing window requirements that NTA seeks to avoid. Thus CBA and its members have a clear interest in this proceeding.

2. CBA and NTA work together in many situations, and it is CBA's policy to cooperate with NTA whenever possible. CBA wholeheartedly supports NTA's effort to promote and to advance free, over-the-air television, together with local news and other informational

¹ The Commission invited comments on NTA's Petition in DA-03-622, published in the *Federal Register* on March 17, 2003, 68 FR 12652.

03-10666-014
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programming. However, CBA is unable to support this particular Petition, because it is premised on a poor policy judgment that values repeaters of distant network TV stations above local programming, and it would likely open the door to too many abuses by applicants who seek greater facilities and broader kinds of operation than NTA contemplates. Also, recent developments may make the relief NTA requests unnecessary to achieve the desired objective of improving rural television viewing opportunities.

3. Wrong Priorities. There is a fundamental premise underlying the Petition, which is that the objective of providing up to six over-the-air national network services to every television viewer in the country is paramount. While the development and growth of new networks is of course desirable, CBA does not agree that this goal should be pursued at the expense of local programming, which is what would happen if spectrum were taken up by hundreds, if not thousands, of new rural translators. Local programming is a bedrock objective that has been pursued since the beginning of broadcast regulation; but new local programming opportunities would be curtailed, if not stifled, if six channels were taken up in every community by network translators. The public interest would not be served by the arrangement of priorities that NTA seeks.² Rather, the Commission should afford the establishment of new local programming services at least as much, if not more, priority than the construction of new translators.

5. Results of NTA's Rural Test. The four-station Grade B service test suggested by NTA for Rural Translators would not limit eligibility as much as NTA suggests. NTA does not

² Affiliates of the new and emerging networks that NTA seeks to distribute by Rural Translators rarely have much local programming; and in any event, a translator by definition rebroadcasts a primary signal from too far away for direct over-the-air reception, which makes it unlikely that the primary station would carry any local news or information of immediate interest to the translator's community. Thus NTA's point that translators are needed despite the availability of "local-into-local" satellite services is not persuasive.

make clear what stations it would count in applying the test. At page 7 of the Petition, it refers to “television” stations; but at page 23, it uses the term “primary television” stations, without defining the term “primary.” If the test is met only by full power television stations that are not classified as satellite stations, then at least 50 Designated Market Areas (“DMAs”) would qualify as having fewer than four stations, and large parts of other DMAs would also qualify. In other words, a substantial part of the country would be opened up to Rural Translators. It also makes no sense to ignore Class A and LPTV stations, which may, and often do, affiliate with national networks, particularly emerging networks. Since there is no restriction on combining originating (LPTV) and repeating (translator) operations at one station, the existence of a Class A or LPTV station is not a barrier to providing network service and also importing programming from an in-state city if there is sufficient public demand for either or both of those services. It makes more sense, then, to encourage the establishment of new LPTV stations, that can offer a variety of services to the local community, than to give priority to repeaters that never originate any programming.

4. Great Potential for Abuse. NTA’s proposal would almost surely lead to abusive practices, notwithstanding NTA’s disavowal of such intent. The Year 2000 application window attracted some 4,500 applications, many obviously from speculators. Many applications are pending to move LPTV and TV translator stations out of rural areas and into urban markets. NTA itself recognizes that to avoid the abuse of Rural Translator applications as a stepping stone to a greater and more valuable facility, no modification of a Rural Translator station could be authorized unless the modified facility itself qualified for Rural Translator status. In other words, program origination would have to be absolutely forbidden, notwithstanding the high

value the Commission has always placed on local service; and no increase in power or transmitter location could be permitted if it would place a signal in an area that was not underserved throughout.³ A regulation that completely prevents growth and improvement is virtually always an open invitation to waiver requests. The Commission would be required to examine those requests, resulting in the use of valuable time and resources that are needed to process conventional LPTV and translator applications. In the end, the probability of another speculative “gold rush” under NTA’s proposal would be high.

5. NTA’s concept of requiring all applications for non-qualifying Rural Translator improvements to be filed in a window would not solve the problem, because an applicant for a new LPTV station in the window would have to protect any existing Rural Translator, while the Rural Translator applicant seeking improvement would not be required to protect its own facility. Therefore the Rural Translator licensee would have an insurmountable advantage that could allow only that licensee to upgrade to LPTV status or to increase power. That advantage would encourage speculative applications for Rural Translators, in the hope of achieving an advantage in the next window..

6. Recent Developments. Finally, it appears that the rapidly changing television landscape may make the relief NTA seeks unnecessary. The number of DMAs in which local-into-local broadcast satellite service is offered is growing every day,⁴ thereby making in-market

³ CBA does not believe that the 1 kW effective radiated power (“ERP”) Rural Translator maximum suggested by NTA is a really “small” facility for a small community. An ERP of 100 watts should be sufficient to serve most small communities.

⁴ See *EchoStar Satellite Corporation*, DA-03-1510, released May 7, 2003, authorizing EchoStar to launch a new satellite that will increase its capability to provide local-into-local service.

local broadcast signals available to broadcast satellite subscribers in more and more markets. Broadcast satellite operators are also rolling out high definition digital services, thereby allowing rural subscribers to enjoy this new technology. And importantly, the Commission is a long way from disposing of many of the 4,500 applications filed during the Year 2000 window, when a full opportunity was provided for applications for new translators in rural areas.⁵ Until we know how many new translators will be authorized as a result of that window, it is premature to open up yet another filing opportunity.⁶

7. Conclusion. CBA is sympathetic with NTA's complaint that filing windows are too few and far between. That is an administrative problem that merits attention. However, the LPTV Branch Staff is highly diligent, and the policy of providing ample time for compromise and settlement among applicants before throwing large numbers of applications into auction has considerable benefits to the LPTV and translator communities, by allowing the establishment of new services at affordable cost. Perhaps additional Commission resources could be deployed to process applications from the Year 2000 window; but the need for such resources is not a reason to open the door to another barrage of applications that will take even more resources to review, especially when based on the wrong service priority and so open to speculation and abuse.

8. Because NTA's petition is premised on a priority that is not in the public interest, will open too many opportunities for abuse, and addresses a problem that may be significantly

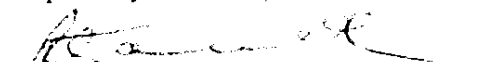
⁵ CBA believes that some 900 of the applications filed in 2000 were for translators.

⁶ Entertaining applications for new translators outside a window, if they achieve cut-off status when filed, will also adversely impair the ability of Class A and LPTV stations to find channels to transition to digital television operation. The Community Broadcasters Protection Act of 1999 mandates that Class A stations be given an opportunity to apply for digital channels; and CBA anticipates that in the near future, the Commission will initiate a rule making addressing digital operation by at least Class A and LPTV stations, if not TV translators as well.

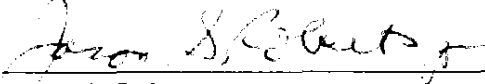
reduced by the results of the Year 2000 window and the rapid expansion of broadcast satellite services, CBA believes that initiating the rule making requested by NTA at this time would not be in the public interest.

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Respectfully submitted,



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May 16, 2003

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CERTIFICATE OF SERVICE

I, Daniella K. Mattioli Knight, do hereby certify that I have, this 16th day of May, 2003, caused to be sent by first class United States mail, postage prepaid, a copy of the foregoing "Comments of the Community Broadcasters Association" to the following:

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